A

DR GEOFFREY ALAN WILLIAMS v. DR TIKFU GEE & ANOR

COURT OF APPEAL, PUTRAJAYA
SUPANG LIAN JCA
AZIMAH OMAR JCA
B NOORIN BADARUDDIN JCA
[CIVIL APPEAL NO: W-01(IM)-458-08-2023]
23 OCTOBER 2025

C **Abstract** – *(i) The 'right to appeal' under s. 31(1) of the Medical Act 1971 ('MA') is strictly limited. It applies only to the registered person, ie, the doctor/medical professional, against whom a disciplinary order was made by the Malaysian Medical Council ('MMC'). It does not extend to the failed complainant, as they are not the 'person who is aggrieved by the order'; (ii) The dismissal of a complaint by the MMC* D *does not constitute a disciplinary order that can be appealed against under Part IV of the MA. The proper avenue for a failed complainant to challenge such a dismissal is through an application for judicial review.*

E ***ADMINISTRATIVE LAW:*** *Disciplinary proceedings – Malaysian Medical Council ('MMC') – Allegations of medical misconduct in treatment of patient – Complainant lodged complaint with MMC – MMC concluded that there was no case to be answered and dismissed complaint and charges – Appeal by complainant against MMC's decision – Whether failed complainant had right to appeal –* F *Whether complainant's appeal competent – Whether complainant 'aggrieved person' – Medical Act 1971, s. 31(1)*

The appellant had lodged a complaint with the second respondent, *ie*, the Malaysian Medical Council ('MMC') against the first respondent, following G an alleged occurrence of the medical misconduct in the latter's treatment of the appellant's friend. Upon full inquiry, the MMC concluded that there was no case to be answered and, accordingly, dismissed the appellant's complaint and charges against the first respondent. This prompted the appellant to commence an originating summons ('OS'), at the High Court, appealing against the MMC's decision. The High Court dismissed the OS on the (i) H preliminary objection on the incompetency of the OS, citing that there was no disciplinary order by the MMC to appeal against; and (ii) ground that the appellant fell outside the scope of an 'aggrieved person' under s. 31(1) of the Medical Act 1971 ('MA 1971'). Hence, the present appeal by the appellant, pursuant to Part IV of the MA 1971.

I

Held (dismissing appeal)
Per Azimah Omar JCA delivering the judgment of the court:

(1) The procedure of appeals under Part IV of the MA 1971 did not clothe a failed complainant with a right to appeal against the MMC's dismissal of his/her complaint. It was a gross misreading of the law for the appellant to even consider the grievance procedures under Part IV of the MA 1971 to be an avenue for failed complainants dissatisfied with the MMC's dismissal of their complaints. (paras 11 & 12)

(2) The core qualifications for the exercise of the 'right to appeal', under s. 31(1) of the MA 1971, were: (i) the appeal must be against an order of the MMC meted out 'in respect of him'; and (ii) the person who is aggrieved by the order of the MMC must be the exact person whom the order was meted out against. Despite the use of the denominator 'any', the full literal context of s. 31(1) of the MA 1971 effectively limited the class of 'any' person aggrieved to the same and exact person whom the MMC's order was meted out against. There were glaring merits in the MMC's preliminary challenge against the competency of the appeal. (paras 3, 13, 14 & 35)

(3) When the MMC dismissed a complaint, then there was never any issuance of a disciplinary order in the exercise of the MMC's disciplinary jurisdiction. Thus, there was no disciplinary order to be appealed against in the first place; nor was the appellant a 'registered person' falling within the class of a 'registered person' which falls within the class of aggrieved persons under s. 31(1) of the MA 1971. The proper remedy that the appellant should have sought was judicial review to quash the MMC's dismissal of his complaint. (para 36)

Case(s) referred to:
Dr Geoffrey Alan Williams v. Dr Tikfu Gee & Anor [2023] CLJU 2769; [2023] 1 LNS 2769 HC ***(refd)***
Dr Koay Cheng Boon v. Majlis Perubatan Malaysia [2012] 4 CLJ 445 FC ***(refd)***
Dr Lourdes Dava Raj Curuz Durai Raj v. Dr Milton Lum Siew Wah & Anor [2020] 9 CLJ 192 FC ***(refd)***
Ireka Engineering & Construction Sdn Bhd v. PWC Corporation Sdn Bhd & Other Appeals [2020] 1 CLJ 193 FC ***(refd)***
Jack-In Pile (M) Sdn Bhd v. Bauer (Malaysia) Sdn Bhd & Another Appeal [2020] 1 CLJ 299 FC ***(refd)***
Liew Hon Kong v Bank Pertanian Malaysia Bhd [2021] 9 CLJ 82 CA ***(refd)***
MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun [2002] 3 CLJ 577 FC ***(refd)***
Ramani Visvanathan & Anor v. Dr Fawziah Tan Sri Dato' Ishak & Anor [2025] CLJU 1922 HC ***(refd)***
View Esteem Sdn Bhd v. Bina Puri Holdings Bhd [2019] 5 CLJ 479 FC ***(refd)***
Zainal Hashim v. Government Of Malaysia [1979] CLJU 132; [1979] 1 LNS 132 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 68(1)(d)
Interpretation Acts 1948 and 1967, s. 30(1)(a), (d)
Medical (Amendment) Act 2012, s. 42(5)
Medical Act 1971, ss. 29(1), 30, 31(1), (2), 33, 35

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For the 1st respondent - Aw Ee Va; M/s Chan Ban Eng & Co
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[Editor's note: For the High Court judgment, please see Dr Geoffrey Alan Williams v. Dr Tikfu Gee & Anor [2023] CLJU 2769; [2023] 1 LNS 2769 (affirmed).]

Reported by Najib Tamby

JUDGMENT

Azimah Omar JCA:

Introduction

[1] The appeal before us primarily concerns technical issues which directly impugn the competency of this very appeal before us against the decision of the High Court (of which by the operation of a specific statute, should be regarded as final and falls within the class of matters which are non-appealable under s. 68(1)(d) of the Courts of Judicature Act 1964 ("CJA").

[2] At the heart of the appeal proper, this is Dr Geoffrey Alan Williams' ("the appellant") appeal against the decision of the learned High Court Judge ("learned judge") for dismissing the appellant's originating summon (filed pursuant to s. 31(1) of the Medical Act 1971 ("MA 1971") ("appellant's appeal-OS") in appealing against the Malaysian Medical Council's ("MMC/second respondent") decision to dismiss the appellant's complaint against Dr Tikfu Gee ("first respondent"), regarding an alleged disciplinary offence (or medical misconduct) in the first respondent's treatment of the appellant's friend, one Nur Muhammad Tajrid bin Zahalan ("patient Tajrid") on 18 July 2015. The learned judge's dismissal of the appellant's appeal-OS was also premised on a technical point on the competency of the appeal-OS (from the aspect of the appellant's lack of capacity or *locus standi* and right to appeal).

[3] From the outset, we are beckoned to highlight that the appellant was in gross misunderstanding of the grievance procedures laid down under Part IV of the MA 1971 (which in actuality was an appellate jurisdiction exclusively available only to registered practitioners (as aggrieved persons) in the instance where the MMC had meted out an order ("disciplinary order") to reprimand such registered practitioner). The appeals procedures

under Part IV of the MA 1971 by no means whatsoever were exercisable by a failed complainant who was aggrieved by the MMC's dismissal of his or her complaint(s). The proper remedy that the appellant (as a failed complainant) should have sought for was for a judicial review to quash the decision of the MMC (see Federal Court in *Dr Lourdes Dava Raj Curuz Durai Raj v. Dr Milton Lum Siew Wah & Anor* [2020] 9 CLJ 192; [2020] 5 MLJ 185).

[4] The second technical issue arose following the second respondent's motion to strike out the appeal before us (on the premise of incompetency due the finality and non-appealability of the learned judge's decision by the statutory operation and force of s. 31(2) of the MA 1971 (which was still in force and had not yet been repealed during the material time of the commission of the first respondent's alleged disciplinary offence (or misconduct). The second respondent's motion to strike out was dismissed on 29 January 2024 without prejudice to the second respondent's contention on the competency of the appeal and the applicability of the saving or transitional provision of s. 42(5) of the Medical (Amendment) Act 2012 ("MAA 2012").

[5] Thus, by and large the substantive issue of merit in the appellant's appeal-OS before the High Court was never determined (nor was the substantive issue of merit of the appellant's appeal-OS came before us for our determination). Thus, it is not before us to delve into the substance and merits of the appellant's complaint against the respondents. If in case we are minded to allow the appeal, the limited scope of the appeal would only allow us to remit the case back to the High Court for hearing on merits.

[6] In any case, it is only apt for us to first appreciate and lay down the factual matrix that had culminated the appeal before us.

Factual Background

[7] For a swift and easy appreciation of the underlying facts we have prepared Table A below:

	Table A
Date	Event
18.7.2015	Alleged occurrence of the alleged misconduct in the 1st Respondent's treatment of Patient-Tajrid.
16.11.2016	The Appellant (not Patient Tajrid) lodged a formal complaint against the 1st Respondent to the MMC and 11 other registered practitioners.
1.7.2017	The MAA 2012 came into force and thereby Section 31(2) of the MA 1971 was repealed. The High Court's decision is *prospectively was no longer considered as Final or non-appealable* to the Court of Appeal.

18.1.2019	MMC's Preliminary Investigation Committee made a preliminary finding that the complaint was "probably true" and referred the complaint to the Council for full inquiry against the 1st Respondent.
25.11.2019	In due course of inquiry, charges were then framed against the 1st Respondent.
20.6.2022	Upon full inquiry (and hearing the 1st Respondent's defences against the charges framed within the charge sheet), *the Council concluded that there was no case to be answered and thereby the Appellant's complaint and charges against the 1st Respondent was dismissed.*
20.9.2022	Disgruntled by MMC's dismissal of his complaints, the Appellant proceeded to file the Appellant's Appeal-OS in impugning MMC's decision under Section 31(1) of the MA 1971 (new regime post amendment).
27.7.2023	Upon Hearing the Appellant's Appeal-OS, the Learned Judge had dismissed the Appellant's Appeal-OS on the preliminary objection on the incompetency of the Appeal-OS citing that there was no Disciplinary Order by the MMC to appeal against and that the Appellant falls outside of the scope of an 'aggrieved person' under Section 31(1) of the MA 1971.
23.8.2023	The Appellant (instead of pursuing a Judicial Review) opted to file the Appellant's Appeal-OS under the mistaken reliance of the grievance procedures under Part IV of the MA 1971 to Appeal against the Learned Judge's dismissal of the Appellant's Appeal-OS ("COA Appeal").
29.1.2024	The Court of Appeal despite dismissing MMC's Motion to Strike Out the COA Appeal, had ordered the issue on the repeal of Section 31(2) of the MA 1971 and the applicability of the saving/transitional provision under Section 42(5) of the MAA 2012 to be fully argued in the substantive appeal.

(emphasis added)

The Appeal Before Us

[8] We have perused the memorandum of appeal, the High Court's grounds of judgment, the records of appeal and the parties' respective written submissions and we are of the mind that the appeal before us can be decided by determining the following two issues:

(i) issue 1: Whether there was any merit in the MMC's preliminary challenge against the competency of the appeal (in the light of the repealed s. 31(2) of the MA 1971 read together with the saving/transitional provision of s. 42(5) of the MAA 2012); and

(ii) issue 2: Whether the learned judge was correct to find that the appellant's appeal was incompetent (for want of *locus standi*, competency, and right to appeal).

Issue 1: Whether There Was Any Merit In The MMC's Preliminary Challenge Against The Competency Of The Appeal (In The Light Of The Repealed s. 31(2) Of The MA 1971 Read Together With The Saving/ Transitional Provision Of s. 42(5) Of The MAA 2012).

[9] Before we delve into the main question under this heading (on the 'finality' of a High Court decision under s. 31(2) of the old regime of MA 1971, we are beckoned to highlight a glaring error in the appellant's misconstrued 'exercise' of a non-existent right to appeal under the grievance procedures laid down under Part IV of the MA 1971 (particularly the 'right to appeal' under ss. 30 and 31(1) of the MA 1971).

[10] The more pressing question to be framed and determined is whether a failed complainant/patient has the right to appeal against MMC's dismissal of his or her complaint (notwithstanding the subsistence or even repeal of s. 31(2) of the MA 1971 (pre-2012 amendment).

[11] Without even addressing the complexities surrounding the repeal of s. 31(2) of the MA 1971, we find that notwithstanding the effect of the retrospective subsistence of the repealed s. 31(2) of the MA 1971 (coined by the MMC) or the prospective erasure of the finality of a High Court's decision due to the repeal of s. 31(2) of the MA 1971 (coined by the appellant), the irrefutable and immovable fact remains that the procedure of appeals under Part IV of the MA 1971 does not clothe a failed complainant with a right to appeal against the MMC's dismissal of his/her complaint.

[12] Notwithstanding whether the High Court's decision was non-appealable or not, the fact of the matter is the MA 1971 had neither prescribed an appeal's procedure nor the very right to appeal for a failed complainant whose complaint was dismissed by the MMC. It was a gross misreading of the law for the appellant to even consider the grievance procedures under Part IV of the MA 1971 to be an avenue of appeal for failed complainants dissatisfied with the MMC's dismissal of their complaints. The core provision relied upon by the appellant (in his intitulement) was s. 31(1) of the MA 1971 which reads:

> Appeal against orders of the Council
>
> 31. (1) **Any person who is aggrieved** by **any order** made **in respect of him** by the Council in the exercise of its disciplinary jurisdiction may appeal to the High Court, and the High Court may thereupon affirm, reverse or vary the order appealed against or may give such direction in the matter as it thinks proper; the cost of the appeal shall be in the discretion of the High Court. (emphasis added)

[13] The core qualifications for the exercise of the 'right to appeal' under s. 31(1) of the MA 1971 are as follows:

(i) the appeal must be against an order of the MMC meted out in respect of him; and

(ii) the person who is aggrieved by the order of the MMC must be the exact person whom the order was meted out against.

[14] Despite the use of the denominator "any", the full literal context of s. 31(1) of the MA 1971 effectively 'limits' the class of "any" person aggrieved to the same and exact person whom the MMC's order was meted out against. Thus, a failed complainant could not factually and legally be a person who the MMC can issue an order against.

[15] So who is "him" in the proper context of Part IV of the MA 1971? The issuance of an order by the MMC in the exercise of its disciplinary jurisdiction can only be made against a registered person (and never against or "in respect of" a complainant). This is clearly prescribed under s. 29(1) of the MA 1971 under the same Part IV of the MA 1971:

> Disciplinary jurisdiction of the Council
>
> 29. (1) The Council shall have disciplinary jurisdiction **over all persons registered** under this Act. (emphasis added)

[16] Considering the limited scope of the MMC (as per s. 29(1) of the MA 1971), it is plain and obvious that the MMC cannot make any order in respect of a complainant.

[17] For full clarity of the limited scope of MMC's power to make an order under Part IV of the MA 1971, s. 30 of the MA 1971 had clearly listed down the exhaustive list of orders that the MMC can mete out specific and limited against registered persons only:

> Disciplinary punishments
>
> 30. The Council may, in the exercise of its disciplinary jurisdiction, impose any of the following punishments:
>
> (i) order the name of **such registered person** to be struck off from the Register;
>
> (ii) order the name of **such registered person** to be suspended from the Register for such period as it may think fit;
>
> (iii) order the **registered person** to be reprimanded; or
>
> (iv) make any such order as aforesaid but suspend the application thereof, subject to such conditions as the Council may think fit, for a period, or periods in the aggregate, not exceeding two years
>
> and may, in any case, **make such order as the Council thinks fit with regard to the payment of the costs** of the Registrar and **of any complainant or of the registered person,** and any costs awarded may be recovered as a civil debt. (emphasis added)

[18] Thus, the full and literal context of the matters and manners of orders that the MMC is statutorily authorised to issue are specific and limited against registered persons only. The only minute matter that the MMC may arguably make an order against a complainant is limited to the specific matter of costs.

[19] A dismissal of a complaint is not a disciplinary order against a failed complainant just because the decision was unfavourable to the complainant. In fact, a dismissal of a complaint is not at all even an order.

[20] Thus, even assuming that the legislative amendment and repeal of s. 31(2) of the MA 1971 somehow retrospectively applies (which it does not) against the first respondent's alleged misconduct in 2015 (and the decision of the High Court is no longer final and is appealable), the grievance procedures under Part IV of the MA 1971 still does not confer the appellant-complainant any rights to appeal against MMC's dismissal of his complaint.

[21] Hence, the reason underlying the usual law and exercise of applying for a judicial review by a failed complainant who was dissatisfied with the MMC's dismissal of the complaint. This was recently restated by the Federal Court in *Dr Lourdes Dava Raj Curuz Durai Raj v. Dr Milton Lum Siew Wah & Anor* [2020] 9 CLJ 192; [2020] 5 MLJ 185. In Dr Lourdes, the Federal Court addressed the instances of both an appeal by a medical practitioner who was reprimanded under s. 31(1) of the MA 1971 and a judicial review application by a failed complainant whose complaint was dismissed by the MMC. It was clear that the Federal Court upheld the proper respective procedures in challenging the decision of the MMC (being an appeal under s. 31(1) of the MA 1971 for a reprimanded doctor, and a judicial review application for a failed complainant):

> Pursuant to *Dr Milton's official complaint,* the *MMC investigated* the matter, considered Dr Lourdes' defence to a charge of 'infamous conduct in a professional respect' and *finally decided, by a majority, that Dr Lourdes had no case to answer. Dissatisfied with the outcome, Dr Milton filed judicial review ('JR') proceedings to quash the mmc's majority decision,* declare that Dr Lourdes was guilty of the charge and direct the MMC to impose an appropriate sentence after hearing Dr Lourdes' mitigation.
>
> …
>
> Appeal against MMC'S decision by Dr Lourdes
>
> [19] *In response to the punishment meted out by the MMC, Dr Lourdes filed an originating summons under s. 31 of the Medical Act 1971 seeking to set aside the reprimand* and to obtain a declaration that since he was not a party to the Court of Appeal proceedings, he was not bound by the Court of Appeal decision dated 27 October 2015. (emphasis added)

[22] We are thoroughly aware of a very recent unreported decision by a learned Judicial Commissioner ("learned JC") in *Ramani Visvanathan & Anor v. Dr Fawziah Tan Sri Dato' Ishak & Anor* [2025] CLJU 1922; [2025] MLJU 2402 in which the learned JC had somehow penned down a self-contradicting conclusion. In self-contradiction, the learned JC had in one breath correctly upheld the High Court decision in *Dr Geoffrey Alan Williams v. Dr Tikfu Gee & Anor* [2023] CLJU 2769; [2023] 1 LNS 2769; [2023] MLJU 3086 (in that only reprimanded doctors are clothed with the right to appeal against a disciplinary order by the MMC):

> [24] *Only R1, who is a medical practitioner and a person registered under the Medical Act 1971, would qualify as an aggrieved person. Only R1 can launch an appeal to the High Court against the decision of the MMC*, and not the Applicants. Thus, the *Applicants do not qualify as an aggrieved person under section 31 (1) of the Medical Act 1971 and have no right to appeal the decision of the MMC.* (emphasis added)

[23] Perplexingly in the same breath the learned JC erroneously concluded that the proper avenue for the failed complainant to challenge the MMC's decision is to file an appeal under s. 31(1) of the MA 1971 (which was squarely in contradiction with his earlier finding that a complainant "have no right to appeal the decision of the MMC"):

> [25] Furthermore, any application to challenge the order of the MMC must be made by way of an appeal, and not judicial review. The Applicants have commenced the judicial review application herein pursuant to the Medical Act 1971, and are therefore bound by the provisions stipulated therein. They cannot contend on one hand that this judicial review application is brought under the provisions of the Medical Act 1971, and in the same vein allege that they are not bound by the provisions of the Medical Act 1971.

[24] We are not inclined to follow the confusing and self-contradicting decision in *Ramani* above. In fact, we are bound by the doctrine of *stare decisis* (and indeed prefers to follow) the astute and correct position of the Federal Court (as apex court) in *Dr Lourdes*.

[25] In actuality, the appellant's appeal already fails *in toto* at this preliminary juncture for the improper and erroneous exercise of the right to appeal under the grievance procedures under Part IV of the MA 1971. Nevertheless, we will continue to delve into the specific question on the applicability of the saving/transitional provision of s. 42(5) of the MAA 2012 (regarding the prospective enforcement of the repeal of s. 31(2) of the MA 1971). Section 42(5) of the MAA 2012 reads as follows:

Saving and transitional provisions

…

(5) *Any disciplinary offence committed or alleged to have been committed by a medical practitioner before the date of coming into operation* of this Act shall, after the date of coming into operation of this Act, *be dealt with in accordance with the principal Act as if the principal act had not been amended by this act.*

(emphasis added)

[26] A plain and literal appreciation of the saving/transitional provision above already clearly shows that it was the explicit intention of the legislators that the repeal of s. 31(2) of the MA 1971 was never intended to have a retrospective effect.

[27] In a lame attempt to dispute the applicability of the saving/transitional provision, the appellant insisted that the provision (as well as the grievance procedures in Part IV of the MA 1971) must be read '*in tandem*' with s. 33 of the MA 1971 (which was a provision under Part V which was an entirely different part of the Act than Part IV which exclusively deals with disciplinary proceedings). The appellant erroneously submitted that "disciplinary offence" under the saving/transitional provision was defined under s. 33 which reads:

Offences

33. (1) *Any person not registered* or exempted from registration under this Act who –

(a) *wilfully and falsely pretends* to be registered under this Act or to be qualified to practise medicine or surgery;

(b) *wilfully and falsely takes or uses the name or title* of physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner or apothecary;

(c) *wilfully and falsely takes or uses any name, title, addition or description implying that he is registered under this Act,* or that he is recognized by law as a physician or surgeon or licentiate in medicine and surgery or a practitioner in medicine or an apothecary;

(d) *wilfully and falsely takes or uses any name, title, addition or description,* or uses any instrument, calculated to *induce any person to believe that he is qualified to practise medicine* or surgery according to modern scientific methods;

(e) practises medicine or surgery;

(f) uses the term "clinic" or "dispensary" or "hospital" or the equivalent of any of these terms in any other language in the signboard over his place of practice in purported practice of medicine or surgery as a person registered under this Act; or

(g) uses a symbol designed by the Council for the use of registered medical practitioners only, shall be guilty of an offence against this Act.

(emphasis added)

[28] The biggest key in identifying the irrelevance of s. 33 to both the saving/transitional provision and the grievance procedures under Part IV of the MA 1971 is the fact that the offences listed down in s. 33 refers to penal offences (and not disciplinary offences) which are only able to be committed by fraudsters who are falsely practicing medicine or falsely pretending to be medical practitioners ("any person not registered").

[29] These offences under s. 33 cannot at all be considered disciplinary offences as it goes beyond the realm of discipline and transcends into the realm of fraudulent falsehood. A 'disciplinary' offence can only refer to offences or misconduct of registered persons who are 'within the discipline of medicine'. A fraudster who falsely practices medicine cannot be disciplined or reprimanded as an errant practitioner. Instead, a fraudster who falsely practices medicine should be penalised under s. 35, Part V of the MA 1971.

[30] Thus, "disciplinary offence" in s. 42(5) of the MAA 2012 must necessarily refer to disciplinary misconduct or offences determined *vide* the MMC's disciplinary jurisdiction under the grievance procedures in Part IV of the MA 1971. It necessarily follows that we must take heed of this saving/transitional provision as it is indicative of the legislative's intention as to the proper enforcement of an amendment or a repeal. The Federal Court in *View Esteem Sdn Bhd v. Bina Puri Holdings Bhd* [2019] 5 CLJ 479; [2018] 2 MLJ 22 also highlighted the pertinence of saving/transitional provision in identifying the appropriate treatment of an amendment act:

> [29] … *The object of a saving provision is clear enough that is not to interfere with existing rights.* In *Re Thompson Bedford v. Teal* (1889) 45 Ch D 161, Cotton LJ observed (at p 173):
>
> A saving clause as a general rule is not intended to give power to a corporation or body to do something which they could not otherwise do, *but to prevent the enactment from interfering with rights already acquired.*
>
> [30] A saving provision narrows the application of the new Act and not enlarge it. In *Lim Phin Khian v. Kho Su Ming* [1996] 1 MLJ 1; [1996] 1 CLJ 529 the Federal Court per Edgar Joseph FCJ observed (at p 14 (MLJ); p 538 (CLJ)):
>
> > It is a well-known canon of construction that the intention of *a saving provision is to narrow the effect of the enactment in which it is found so as to preserve some existing legal rule or right,* as the case may be, *from its operation.*
>
> [31] The *saving provision* is also a transitional *provision*. It is essentially temporary in duration and would become spent in the course of time *in tandem* with the new act which deals with the new circumstances. As observed by the House of Lords in *Britnell v. Secretary of State for Social Security* [1991] 2 All ER 726 per Lord Keith it should not be read 'as widening the ambit of the substantive legislation' (at pp 729-730):

> *The purpose of a transitional provision being to facilitate the change from one statutory regime to another,* it could not properly be regarded as authorising innovation by widening the ambit of the substantive legislation. As Staughton LJ observed in the Court of Appeal, it is not possible to give a definitive description of what constitutes a transitional provision. In *Thornton on Legislative Drafting* (3rd Ed 1987) p 319 it is said:
>
> > The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force.
>
> One feature of a transitional provision is that its operation is expected to be temporary, in that *it becomes spent when all the past circumstances with which it is designed to deal have been dealt with, while the primary legislation continues to deal indefinitely with the new circumstances which arise after its passage.*
>
> (emphasis added)

(See also Court of Appeal in *Liew Hon Kong v. Bank Pertanian Malaysia Bhd* [2021] 9 CLJ 82; [2022] 1 MLJ 836).

[31] The qualification under the saving/transitional provision in s. 42(5) of the MAA 2012 specifically refers to the commission of the disciplinary offence as well as the time in which the disciplinary offence was allegedly committed ("any disciplinary offence committed or alleged to have been committed by a medical practitioner before the date of coming into operation of this Act"). If the misconduct was allegedly committed before the enforcement date of the MAA 2012, then the old regime of the MA 1971 shall apply (in which s. 31(2) of the MA 1971 shall still apply to render a High Court's decision to be final and non-appealable). Thus, since the alleged misconduct complained of by the appellant allegedly occurred at the time of the first respondent's treatment of the patient Tajrid (on 18 July 2015), then the alleged misconduct supposedly had occurred approximately two years before the MAA 2012 came into force. Therefore, the second respondent still held the right to the finality and non-appealability of the High Court's decision to dismiss the appellant's appeal-OS by virtue of s. 31(2) of the MA 1971 (old regime).

[32] The prospective enforcement of the MAA 2012 is squarely in line with the widely upheld principle that an amendment which carries a legislative effect shall (unless indicated otherwise within the amendment act) operate prospectively. (See *Zainal Hashim v. Government Of Malaysia* [1979] CLJU 132; [1979] 1 LNS 132; [1979] 2 MLJ 276; *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 3 CLJ 577; [2002] 2 MLJ 673; *Jack-In Pile (M) Sdn Bhd v. Bauer (Malaysia) Sdn Bhd & Another Appeal* [2020] 1 CLJ 299; *Ireka Engineering & Construction Sdn Bhd v. PWC Corporation Sdn Bhd & Other Appeals* [2020] 1 CLJ 193).

[33] In fact, the repeal under the MAA 2012 would necessarily attract the application of s. 30(1)(a) and (d) of the Interpretation Acts 1948 and 1967 which reads:

> Matters not affected by repeal
>
> 30.(1) The repeal of a written law in whole or in part *shall not* –
>
> (a) *affect the previous operation of the repealed law or anything duly done or suffered thereunder;* or
>
> (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law; or
>
> (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed law; or
>
> (d) *affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been made.* (emphasis added)

[34] Thus, the above considered, it should justly remain within the respondents' rights to rely on, enjoy, and lean on the finality and non-appealability of the High Court's decision considering the law at that material time in the past (pre-amendment) would prescribe the High Court's decision to be final and non-appealable.

[35] The above considered under this heading, we accordingly answer issue 1 in the positive. There certainly were glaring merits in the MMC's preliminary challenge against the competency of the COA appeal (from the aspect of the repealed s. 31(2) of the MA 1971 read together with the saving/transitional provision of s. 42(5) of the MAA 2012). In fact, even if the respondents were not allowed to rely on the repealed s. 31(2) of the MA 1971, the appellant's appeal-OS still inevitably remains to be incompetent for the erroneous and statutorily wrong exercise of the right to appeal of registered persons under s. 31(1) of the MA 1971.

Issue 2: Whether The Learned Judge Was Correct To Find That The Appellant's Appeal Was Incompetent (For Want Of *Locus Standi*, Competency, And Right To Appeal)

[36] In actuality, our answer on the preliminary issue of the appellant's wrongful pursuit of an appeal under s. 31(1) of the MA 2012 had already sufficiently answer and determine issue 2. We have already found that the appeals procedure within the grievance procedures enumerated under Part IV of the MA 1971 was *in limine*, not a right of appeal for failed complainants to impugn the MMC's dismissal of their complaints. It was exclusively for registered persons (medical practitioners) to appeal against any MMC disciplinary order to reprimand registered persons for a disciplinary offence

(or misconduct). When the MMC dismisses a complaint, then there was never any issuance of a disciplinary order in the exercise of the MMC's disciplinary jurisdiction. Thus, there was no disciplinary order to be appealed against in the first place. Nor was the appellant a "registered person" to fall within the class of aggrieved persons under s. 31(1) of the MA 1971. The proper remedy that the appellant should have sought for was for a judicial review to quash the MMC's dismissal of his complaint.

[37] The above considered under this heading, we accordingly answer issue 2 in the positive. The learned judge was certainly correct to find that the appellant's appeal was incompetent (for want of *locus standi*, competency, and right to appeal).

[38] For completeness, the appellant's bid to nullify s. 31(2) of the MA 1971 (old regime) and s. 68(1)(d) of the CJA (on the grounds of unconstitutionality) cannot at all stand as the constitutionality of both the provisions have already been upheld by the Federal Court in *Dr Koay Cheng Boon v. Majlis Perubatan Malaysia* [2012] 4 CLJ 445; [2012] 3 MLJ 173:

> I agree with the majority decision in *Yong Teck Lee* that the Courts of Judicature Act 1964 is a federal law which was intended by the Legislature to be read together with art 121(1B) of the Constitution. *I would agree with the submission of counsel for the Council that reading art. 121(1B) of the Constitution with s 68 of the Courts of Judicature Act 1964 and premised on the clear and unequivocal wordings of s. 31(2) of the Act, the decision of the High Court is final and not appealable.* Section 68(1)(d) of the Courts of Judicature Act 1964 clearly provides that no appeal shall be brought to the Court of Appeal where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final. The Act is an Act of Parliament and hence fall within the meaning of 'federal law' as provided for in art. 160(2) of the Constitution. Article 121(1B) confers jurisdiction on the Court of Appeal to determine appeals from the decision of a High Court or a judge thereof and such other jurisdiction as may be conferred by or under federal law. The Act is a federal law and s. 31(2) of the Act clearly provides that the decision of the High Court upon an appeal from the respondent shall be final.
>
> *Being a creature of statute, the Court of Appeal has no power to enlarge its jurisdiction. Since the decision of the High Court under s. 31(2) of the Act is final, the Court of Appeal has no power to enlarge its jurisdiction by hearing such an appeal.* Such an appeal before that court would be incompetent. For the aforesaid reasons, I would hold that the decision of the Court of Appeal in the instant appeal, *viz*, that it did not have the jurisdiction to hear the appeal by the appellant is correct. The Court of Appeal properly appreciated the applicable law to arrive at a judicious decision.
>
> *On the whole, I cannot see how it can be said or suggested that s. 31(2) of the Act and s. 68(1)(d) of the Courts of Judicature Act 1964 are inconsistent with art. 121(B) of the Constitution.* Statutes should be interpreted, wherever possible, as to give effect to all of them. That is what is known as the rule of harmonious construction. (emphasis added)

A

Our Decision

[39] All of the above deliberations considered, we find that, that there are no merits in the appellant's COA appeal. Thus, the appellant's appeal is hereby dismissed. Therefore, the learned judge's decision to dismiss the appellant's appeal-OS on the ground of incompetency is affirmed.

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[40] Accordingly, we order the appellant to pay costs of RM15,000 to the first respondent and RM25,000 to the second respondent. Both order of costs is subject to allocatur.

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